

Independent Medical Review Regulations	COMMENTS 45 DAY COMMENT PERIOD	NAME OF PERSON/ AFFILIATION	RESPONSE	ACTION
Section 9768.5	Re conflict of interest disclosure: In many cases the physician is unaware that being a part of a large MPN affiliates with them as stakeholders. MPNs routinely contract with insurers and TPA.	Jonathan Sobelman, M.S., M.B.A. Broadspire Services February 11, 2005 Written comment	We disagree. The physician will know if s/he is receiving money from an MPN for the physician's services.	None.
Section 9768.15	If the IMR decision regarding treatment/diagnosis upholds any of the previously made diagnosis/treatment(s), the employee should be held financially responsible for the IMR.	Jonathan Sobelman, M.S., M.B.A. Broadspire Services February 11, 2005 Written comment	We disagree. Labor Code section 4600 requires the employer to provide for medical treatment that is reasonable required to cure or relieve the injured worker.	None.
Section 9768.2	The regulations fail to prohibit the IMR from making referrals to a physician with whom they have an unofficial agreement.	Jonathan Sobelman, M.S., M.B.A. Broadspire Services February 11, 2005 Written comment	We disagree that the regulations need to be modified to include this concern. If this were to occur, the physician should be reported to the appropriate authorities.	None.
Section 9768.3	Objects to the disqualification because of an "accusation" or a "loss of staff privileges."	Kathleen S. Creason Osteopathic Physicians & Surgeons of California March 15, 2005, written comment and March 16, 2005, public hearing	We disagree. Because the injured worker is required to be examined by the IMR chosen by the AD, it is necessary to set forth stringent qualifications. Additionally, the physician may reapply when the accusation is no longer pending.	None.
Section 9768.8	Objects to the removal of a physician from the IMR list upon an accusation of a quality of care violation, fraud or felony crime.	Kathleen S. Creason Osteopathic Physicians & Surgeons of California March 15, 2005, written comment and March 16, 2005, public hearing.	We disagree. Because the injured worker is required to be examined by the IMR chosen by the AD, it is necessary to set forth stringent qualifications. Additionally, the physician may reapply when the accusation is no longer pending.	None.
Section 9768.11	Recommends "For injuries <u>and/or treatments</u> not covered by the medical treatment utilization schedule or by the ACOEM	Kathleen S. Creason Osteopathic Physicians & Surgeons of California	We disagree. The recommended language is too broad.	None.

	guidelines...”	March 15, 2005, written comment and March 16, 2005, public hearing.		
Section 9768.4	Recommends adding “(6) Agree to render recommendation consistent with Labor Code section 4604.5.”	Brenda Ramirez CWCI March 16, 2005 Written comment	We disagree. The contract (9768.5) requires the physician to agree to follow the medical treatment utilization schedule. Section 9768.12(a)(8) requires the reports to contain an analysis if the disputed health care is consistent with the medical treatment utilization schedule. Section 9768.8(a)(2) allows for the removal of the physician from the IMR list if the physician has not met the reporting requirements on more than one occasion.	None.
Section 9768.8	Recommends adding “(5) That the physician has failed to render recommendations consistent with Labor Code section 4604.”	Brenda Ramirez CWCI March 16, 2005 Written comment	We disagree. The contract (9768.5) requires the physician to agree to follow the medical treatment utilization schedule. Section 9768.12(a)(8) requires the reports to contain an analysis if the disputed health care is consistent with the medical treatment utilization schedule. Section 9768.8(a)(2) allows for the removal of the physician from the IMR list if the physician has not met the reporting requirements on more than one occasion.	None.
Section 9768.1	Recommends re-wording line to state: “You may select an alternative to the specialty of the treating physician from the list on the instructions for this form.”	Brenda Ramirez CWCI March 16, 2005 Written comment	We disagree. The current wording is clearer.	None.

	<p>Recommends striking the release and informing the employee that the medical information will be sent.</p> <p>Recommends replacing the codes to the ABMS Specialty codes.</p>		<p>We disagree. Labor code section 4616.4(c) requires a release.</p> <p>The specialty codes were developed by the DWC and are appropriate for workers' compensation injuries.</p>	<p>None.</p> <p>None.</p>
Section 9768.17	Modify last sentence of (b) as follows: "If the employee chooses to receive medical treatment with a physician outside the MPN, the treatment is limited to the <u>disputed</u> treatment recommended by the IMR or the <u>disputed</u> diagnostic service recommended by the IMR."	Brenda Ramirez CWC March 16, 2005 Written comment	We disagree. Adding "dispute" to the sentence makes it confusing.	None.
Section 9768.17	The injured worker should retain the right to seek treatment outside the network if the IMR physician determines that the network doctors were providing inappropriate or inadequate treatment.	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	We disagree. Labor Code section 4616.4 provides only that the injured worker may seek the disputed treatment or diagnostic service from a physician of his or her choice from within or outside the MPN.	None.
Section 9768.10	<p>Objects to failure to define relevant medical information in light of Labor Code section 4616.4's requirements as to which records must be produced.</p> <p>Also requests that the employee be provided with a copy of the records sent.</p>	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	<p>We agree.</p> <p>We agree. The instructions on the back of the form require the MPN contact to send a copy of the medical reports to the employee.</p>	<p>Section 9768.1(a)(11) is amended to define "relevant medical records."</p> <p>None.</p>
Section 9768.10	The injured worker should be informed that s/he may send material or documentation with the application.	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	We agree	The form is revised to inform the injured worker that s/he may attach additional materials, such as medical records.

Medical Records Confidentiality	The regulations fail to ensure the confidentiality of the medical records.	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	We agree.	Section 9768.5 is amended to include in the verification section the following statement: "I understand that I must maintain the confidentiality of medical records and the review materials consistent with the applicable state and federal law." Section 9768.8(a)(5) is amended to include failure to maintain confidentiality of medical records as a ground for removal from the IMR list.
Section 9768.9	This section requires the MPN Contact to notify the injured worker about the IMR process. Recommends a required notification letter.	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	We disagree. This notification is required by 8 CCR §9767.12(b). 8CCR §9767.3 requires a copy of the sample notification letter with the MPN application.	None.
Section 9768.9(d)	Suggests providing the injured worker with a panel of three, similar to the QME process, within a 200 mile radius.	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	We disagree. Labor Code section 4616.4 (c) states that "the administrative director shall assign the independent medical reviewer."	The word "list" in subdivisions (d) and (e) are revised to state "panel."
Section 9768.9(h)	The section fails to state what will happen if the IMR cannot perform the evaluation in the required time frame.	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment.	We disagree. Section 9768.4 provides that the IMR must agree to see any injured worker assigned to him within 30 days unless there is a conflict of interest. Section 9768.7 allows a physician to request to be	None.

			placed on voluntary inactive list if the physician will be unable to see injured workers. Section 9768.8 (a)(4) provides that the physician will be removed from the IMR list if he or she fails to schedule appointments within the time frame.	
Section 9768.9(j)	The section forces the injured worker to continue treatment with the physician of his or her choice during the IMR process. Suggests changing “is required to” to “may.”	Peggy Sugarman Mark Hayes VotersInjuredatWork.org March 16, 2005, written comment and public hearing.	We agree in part. The section will be clarified.	The section is revised to state, “During this process, the employee shall remain within the MPN for treatment pursuant to section 9767.6.”
Section 9768.2	Subdivision (a)(3) should be amended to prohibit any connection between the IMR and the 2 nd and 3 rd opinion doctors.	J. David Schwartz, President CAAA March 16, 2005, written comment.	We disagree. The IMR is reviewing the recommendation of the treating physicians, not the 2 nd and 3 rd opinion physicians.	None.
Section 9768.2	Subdivision (b): The IMR should have no connection with the MPN.	J. David Schwartz, President CAAA March 16, 2005, written comment.	We disagree. Some MPNs are very large and include physicians from the entire state. The proposed limitation would reduce the pool of IMRs drastically.	None.
Section 9768.4	Subdivision (c): Requests that the list be open to the public and available through the DWC website.	J. David Schwartz, President CAAA March 16, 2005, written comment and Mark Gerlach CAAA March 16, 2005, public hearing.	The list will be available on the website.	None.
Section 9768.9	Subdivision (a): The IMR application form should be in English and Spanish.	J. David Schwartz, President CAAA	We disagree. Labor Code section 4616.4(c) does not require the form to be in Spanish. However, DWC	None.

		March 16, 2005, written comment.	plans to eventually have the forms translated into Spanish.	
Section 9768.9	Subdivision (d): Recommends deleting the last sentence	J. David Schwartz, President CAAA March 16, 2005, written comment.	We disagree. This second choice will allow the AD to choose an IMR if there would otherwise be none available.	None.
Section 9768.9	Subdivision (f): Suggests that a reasonable time limit be established for the AD to notify the parties of the selection of the IMR.	J. David Schwartz, President CAAA March 16, 2005, written comment.	We disagree. The AD will notify the parties as soon as possible.	None.
Section 9768.9	Subdivision (g): Replacement of an IMR should occur within 10 days. The verification of any conflict of interest should have a 14 day time limit.	J. David Schwartz, President CAAA March 16, 2005, written comment.	We disagree that the time limits must be set forth in subdivision (g).	None.
Section 9768.9	Subdivision (h): The 60 day time limit for an employee to make an appointment with the IMR should be deleted as there is no authority nor policy reason.	J. David Schwartz, President CAAA March 16, 2005, written comment and Mark Gerlach CAAA March 16, 2005, public hearing.	We disagree. If an appointment is not sought within 60 days, it is likely that the condition will have changed and the disputed diagnosis or treatment is not longer applicable. After the 60 days, the injured worker may still request an IMR as long as it concerns a different diagnosis or treatment. The time limit is set so that the other parties will know if the employee chosen not to continue with the dispute process but failed to notify the parties. Labor Code section 4616(g) provides the authority to adopt regulations to implement the article.	None.
	There should be a process to extend the time if there are questions concerning conflicts of		We disagree. The employee should schedule the appointment when he or	None.

	interest.		she is receives the notice form the AD. If there is a conflict, a new notice will be sent and the 60 day time period begins again.	
Section 9768.10	<p>The claims administrator should be required to provide the employee with a pre-addressed, postage paid envelope to mail the form to the DWC.</p> <p>The form needs to be simplified. "Describe diagnosis and part of body affected," is confusing.</p> <p>The form should also be in Spanish.</p>	J. David Schwartz, President CAAA March 16, 2005, written comment.	<p>We disagree. The form is sent at the time the third opinion physician is requested. The employee may not request an IMR. Additionally, the employee may choose to enclose additional documents, and the pre-paid postage would be incorrect.</p> <p>We disagree. The Labor Code requires the form to be one page and requires the release language. The employee section of the form is concise and understandable.</p> <p>We disagree. Labor Code section 4616.4(c) does not require the form to be in Spanish. However, DWC plans to eventually have the forms translated into Spanish.</p>	<p>None.</p> <p>None.</p> <p>None.</p>
Section 9768.11	Subdivision (a): Payment of transportation should be the same as for QME: "Upon receipt of written notice of the appointment arrangements from the employee ... the employer shall furnish payment of estimated travel expenses."	J. David Schwartz, President CAAA March 16, 2005, written comment.	We disagree. The regulation requires the MPN Contact to furnish transportation.	None.
Section 9786.11	Subdivision (d) Re the requirement that the employee must reschedule a missed IMR appointment within 5 days or the IMR will perform a review of the records, the harsh time limits lack statutory authority and policy justification. Also, the employee should be	J. David Schwartz, President CAAA March 16, 2005, written comment and	We disagree. Requiring an employee to reschedule a missed appointment within 5 days is not harsh. Per section 9767.12, the employee will receive a description (in English and Spanish) of how to request and	None.

	<p>advised of the time limit at the time the IMR process is initiated.</p> <p>The employee needs to be advised that the appointment must be made in 60 days.</p>	<p>Mark Gerlach CAAA March 16, 2005, public hearing.</p>	<p>receive an independent medical review at the time of the selection of a physician for a third opinion.</p> <p>The requirement to make an appointment within 60 days is on the instruction sheet for the IMR Application (9786.10).</p>	None.
Section 9768.11	Subdivision (f): It is illogical for the IMR to be responsible for determining whether the process must be done on an expedited basis.	<p>J. David Schwartz, President CAAA March 16, 2005, written comment.</p>	<p>We disagree. This subdivision is based upon the requirements of Labor Code section 4616.4(f).</p>	None.
Section 9768.17	Subdivision (b): All subsequent treatment necessary to treat the injured worker should be from a provider outside the MPN. The final two sentences in this subdivision should be deleted.	<p>J. David Schwartz, President CAAA March 16, 2005 written comment and Mark Gerlach CAAA March 16, 2005, public hearing.</p>	<p>We disagree. Labor Code section 4616.7 (i) states that if the determination of the IMR finds that the disputed treatment or diagnostic service is consistent with section 5307.27 or ACOEM, the injured employee may seek the disputed treatment of diagnostic service from a physician of his or her choice from within or without the MPN. It does not allow for all subsequent treatment to be from a physician outside the MPN.</p>	None.
Section 9768.17	Subdivision (d): Suggests, "if a disputed service or treatment is determined to be consistent with the appropriate guidelines by the IMR, these regulations should state that the employer or insurer (of the MPN) shall immediately authorize any request for the approved treatment by an out-of-network doctor and may not send such a request to utilization review."	<p>J. David Schwartz, President CAAA March 16, 2005, written comment.</p>	<p>We disagree. The regulation and statute are clear.</p>	None.
Section 9768.5 And	Recommends replacing the specialty codes	Jose Ruiz	The specialty codes were developed	None.

Section 9768.10	with the 24 approved categories recognized by the American Board of Medical Specialties.	SCIF March 16, 2005 Written comment	by the DWC and are appropriate for workers' compensation injuries	
Section 9768.11	Subdivision (a) – recommends adding the word “relevant” before correspondence.	Jose Ruiz SCIF March 16, 2005 Written comment	We disagree. However, this subdivision is changed to require the MPN Contact send all relevant medical records. : "Relevant medical records" is defined to include the items required by Labor Code section 4616.4(d).	This subdivision is changed to require the MPN Contact send all relevant medical records. "Relevant medical records" is defined to include the items required by Labor Code section 4616.4(d).
Section 9768.16(a)	Change to state “The AD shall immediately adopt the determination of the independent medical reviewer and issue a written decision within 5 business days of receipt of the IMR’s report that meet the AD’s standards and timeframes.” Section 9768.11(k) allows either party to reject an IMR’s report for being outside the timeframes.	Jose Ruiz SCIF March 16, 2005 Written comment	We disagree. Labor Code section 4616.4 (h) does not allow the AD to reject the IMR’s determination.	None.
Section 9768.17(b)	Recommends adding “disputed” before treatment and diagnostic service to clarify that treatment outside the MPN is only for the disputed treatment of diagnostic service.	Jose Ruiz SCIF March 16, 2005 Written comment	We disagree. Using disputed in this sentence is more confusing, as the dispute has now been resolved.	None.
Conflict of Interest Section 9768.2(b)	Concerned that DWC is allowing a conflict of interest by permitting the IMR physician to be a member of the MPN if beyond a 35 mile distance.	Carlyle Brakensiek Society of Industrial Medicine and Surgery March 16, 2005 Public Hearing	We disagree. Some MPNs are very large and include physicians from the entire state. The proposed limitation would reduce the pool of IMRs drastically.	None.
N/A	Comments did not concern the IMR regulations.	Jose Landaverde Concerned member of the public March 16, 2005, public hearing	Comments did not concern the IMR regulations.	None.